

IN THE
United States Circuit Court of Appeals
For the Ninth Circuit

DOMINIC CONSTANTINE MONTAGUE,
Plaintiff in Error,

VS.

UNITED STATES OF AMERICA,
Defendant in Error.

Transcript of the Record

*Upon Writ of Error from the United States Dis-
trict Court for the District of Idaho,
Northern Division.*

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NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD.

W. B. McFARLAND,
Coeur d'Alene, Idaho,

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McKEEN F. MORROW,
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*In the District Court of the United States in and
for the District of Idaho, Northern Division.*

UNITED STATES OF AMERICA,

vs.

DOMINIC CONSTANTINE,

Defendant.

No. 1627.

INDICTMENT.

Charge: Unlawfully dispensing
narcotics. Violation Act of De-
cember 17, 1914.

The Grand Jurors of the United States of America, being first duly impaneled and sworn, within and for the District of Idaho, Northern Division, in the name and by the authority of the United States of America, upon their oaths do find and present:

That heretofore, to-wit: On or about the 6th day of April, A. D. 1921, at Colburn, in Bonner County, Idaho, and in the Northern Division of the District of Idaho, Dominic Constantine did then and there deal in, dispense, sell and distribute certain compounds and derivatives of opium and coca leaves, to-wit, morphine sulphate and cocaine hydrochloride, without first having registered with the Collector of Internal Revenue for the District

of Idaho his name and place of business and place or places where such business was to be carried on, as required by law.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

J. L. McCLEAR,
*United States Attorney for the
District of Idaho.*

T. J. MORROW,
*Foreman of the United States
Grand...Jury.*

WITNESSES EXAMINED BEFORE THE
GRAND JURY IN THE ABOVE CASE:

H. T. Holtz
H. W. Coltz

Endorsed, Filed May 24, 1921,
W. D. McREYNOLDS, Clerk.

At a stated term of the District Court of the United States for the District of Idaho, held at Coeur d'Alene, Idaho, on Tuesday, July 11, 1922, and other dates as stated, the following proceedings, among others, were had, to-wit:—

Present:—

HON. E. S. FARRINGTON, District Judge.

United States of America,)	MINUTE
vs.)	ENTRY.
Dominic Constantine,)	Criminal No. 1627.
Defendant.)	

Comes now the District Attorney and the defendant into Court, the defendant to be arraigned upon the indictment. The indictment was read to the defendant by the Clerk, whereupon the Court asked the defendant if the name by which he was indicted was his true name, and the defendant replied in the affirmative.

The Court asked the defendant if he pleads guilty or not guilty of the offense charged in the indictment, and the defendant pleaded not guilty.

Before the Honorable Frank S. Dietrich, Judge.
November 27, 1922.

Comes now the District Attorney with the defendant and his counsel into Court, whereupon the defendant's plea was withdrawn and a demurrer to the indictment was filed and argued before the Court by respective counsel. The Court overruled the demurrer allowing the defendant exceptions to the order.

The defendant was then asked if his plea be guilty or not guilty of the offenses charged in the indictment and the defendant pleaded not guilty. The cause then came on for trial before the Court and a jury, McKeen F. Morrow, Assistant District

Attorney, appearing for the United States, and Neil C. Bardsley, Esq., appearing for the defendant, who was also present. The defendant announced that his true name was Dominic Constantine Montague and it was ordered that further proceedings be had under the true name of the defendant.

* * * * *

(Title of Court and Cause.)

No. 1627.

VERDICT.

We, the jury in the above entitled cause, find the defendant guilty as charged in the indictment.

ARTHUR E. FRANKLIN,

Foreman.

Endorsed, Filed Nov. 27, 1923,

W. D. McREYNOLDS, Clerk.

(Title of Court and Cause.)

No. 1627.

JUDGMENT.

Convicted of

Unlawful dispensing of narcotics
violation Act of December 17,
1914.

NOW, on this 4th day of December, 1922, the United States District Attorney, with the defendant and his counsel, Neil C. Bardsley, Esq., came into Court; the defendant was duly informed by

the Court of the nature of the indictment found against him for the crime of unlawful dispensing of narcotics, committed on the 6th day of April, A. D. 1921, of his arraignment and plea of Not Guilty as charged in the indictment, of his trial and the verdict of the jury, on the 27th day of November, A. D. 1922, "Guilty as charged in the indictment." The defendant was then asked by the Court if he had any legal cause to show why judgment should not be pronounced against him, to which he replied that he had none, and no sufficient cause being shown or appearing to the Court.

Now, therefore, the said defendant having been convicted of the crime of unlawful dispensing of narcotics,

It is hereby considered and adjudged that the said defendant, Dominic Constantine Montague, be imprisoned and kept in the U. S. Penitentiary at Leavenworth, Kansas, for the term of Eighteen months, and it is further ordered and adjudged that said defendant be and is hereby remanded to the custody of the United States Marshal for Idaho, to be by him delivered into said prison and to the proper officer or officers thereof.

(Title of Court and Cause.)

No. 1627.

BILL OF EXCEPTIONS.

BE IT REMEMBERED, that the above entitled

cause came on regularly for trial, in the above Court, on the 27th day of November, 1922, at Coeur d'Alene, Idaho, in the above entitled Court, before the Hon. Frank S. Dietrich, the judge thereof, and upon the demurrer interposed to the indictment returned in said cause, which said demurrer was as follows:

Comes now the defendant, Dominic Constantine Montague, and demurs to the information in the above entitled case on the following grounds:

1.

That the grand jury by which it was found had no legal authority to inquire into the offense charged, by reason of its not being within the jurisdiction of such district.

2.

That it does not substantially conform to the requirements, the form, and the certainty required of indictments.

3.

That more than one offense is charged in the indictment.

4.

That the facts stated do not constitute a public offense.

5.

That the indictment contains insufficient statements as to constitute a crime.

That upon an argument being had, the said demurrer was by the Court overruled and an exception to said ruling allowed to said defendant. That

thereafter and on the 27th day of November, 1922, said cause came on regularly for trial before the Hon. Frank S. Dietrich, the judge thereof, and a jury being impaneled, McKeen F. Morrow, Esq., Assistant United States Attorney, appearing as counsel for the plaintiff, and Neil C. Bardsley, Esq., appearing as counsel for the defendant. Whereupon the following proceedings were had, to-wit:

MR. MORROW: May it please the Court, gentlemen of the jury, the indictment in this case is as follows: (Reading indictment to jury).

The government will produce witnesses before you to show,—and I might outline the testimony very briefly, so that you can have it in mind as the witnesses are called,—that about midnight, or possibly a little after midnight, on the night of April 5th, 1921, a Great Northern freight train was stopped at Colburn, Idaho, on the other side of Sandpoint. The train was going west, and special agent Harry T. Holtz, who was on the train, as special agent of the Great Northern Railway Company, was coming along the train, checking the freight cars to see whether anybody was in any of these cars, and he noticed a car door that wasn't sealed; and he had a flash-light, and he saw two men in there, or rather, a man, and a boy about thirteen years old. He said something to them, and the man came up and said, "I am a railroad brakeman," and handed him his card, which was the card of Dominic Constantine.

MR. BARDSLEY: I object to any statement as to what the card showed.

MR. MORROW: In any event, the defendant, the party in the car came to the door, and the agent noticed something in the back of the car, a pack-sack or something of that sort, and he directed the man to bring the pack-sack. He had seen that with the flash-light. The agent was standing on the ground, and the man brought the pack-sack and dumped it down in front of him. And at that particular moment the agent recognized the man as Dominic Constantine, as he had had previous experience with him. And just at the moment he set the sack down in front of him he turned and gave a jump and went out of the door on the other side of the car, and it was night, and he escaped. In the pack sack was found a large quantity of morphine and cocaine, morphine sulphate and cocaine hydrochloride, which was turned over to the federal authorities at Spokane some time on that same day,—that is, this was shortly after midnight, and it was turned over to the federal authorities, narcotic agents, on the 6th.

The evidence will further show, by two witnesses, that the defendant Dominic Constantine was seen near this same freight train the afternoon of April 5th, at Troy, Montana, and that shortly after the arrival of the train that morning at Hillyard, Washington, another witness, who knew the defendant by reason of the fact that he

had been a brakeman on the Great Northern Railway, recognized the defendant coming down through the streets of Hillyard, Washington. Evidently or apparently he had caught the same freight out, in another place; he had disappeared into the woods, or they couldn't locate him after he made this break from the car.

We will further show you the analysis of these drugs, and the testimony in regard to that, and further testimony will—probably you can follow it as it comes in.

MR. BARDSLEY: If the Court pleases, at this time I wish to move, upon the statement of the prosecutor, that the defendant be discharged. The charge in this indictment is that the defendant did then and there deal in, dispense, sell, and distribute certain compounds, and under the statement of the prosecutor there is no testimony to that effect. They merely found a bag, and in this bag was some morphine, and it is not sufficient. The defendant is not confronted with any such charge in this information. That is a charge of possession.

THE COURT: Well, I am not inclined to hold counsel to strict responsibility for insufficiency of statement. It may be that ultimately your position will turn out to be correct, and if the plaintiff proves no more than is suggested it may be that that will have to be the result. However, it isn't necessary to show by direct evidence that one was engaged in selling or dispensing drugs. That may

sometimes appear from the circumstances of the case; so I think I shall wait and see what the circumstances are, before determining whether or not it is a case that may go to the jury under the charge laid in the indictment.

H. T. HOLTZ, was produced as a witness on behalf of the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By MR. MORROW:

“I have been employed for the last several years as a Special Agent for the Great Northern Railway in the District between Spokane and Troy, Montana. I was with a freight train on the night of the 5th, and morning of the 6th of April, 1921, coming from Troy, Montana, to Spokane. We headed in that side track at Coburn, Idaho, for a passenger train, and while we were waiting, I walked up alongside the train, to look over the cars and see if they were all right, and when I got within about ten or twelve cars of the head end of the train, I found a car door that was closed and had no seal on it, and I stuck the car door open.”

The examination continued as follows:

Q. About what time of night was this?

A. That was between one and one-thirty in the morning of April 6th, right after midnight.

Q. What light, if any, did you have?

A. I had a flash light.

Q. What did you see when you threw the car door open?

A. I saw a man and a young lad and a bundle, looked like a pack sack.

Q. What did you do then?

A. I asked them where they were going, and this man spoke up and said he was going to Spokane. I says, "Here's a good place to get out and start walking." He walked over toward the door. I had the flash light on him, and he walked over towards the door and pulled out his bill fold and says, "I am a brakeman," and he handed me the bill fold.

MR. BARDSLEY: Have you that bill fold now?

A. No, I haven't.

MR. BARDSLEY: I object to any testimony as to what was upon that and what it contained.

THE COURT: Well, were you going to seek testimony as to its contents?

MR. MORROW: If counsel desires it for the record, I will ask the question—

THE COURT: Did you see the bill fold?

A. Yes, sir; I had it in my hand.

THE COURT: Did you take it?

A. He handed it to me.

THE COURT: What did you do with it?

A. Read the name on it and handed it back to him.

THE COURT: And that is the last you have seen of it?

A. Yes, sir.

THE COURT: The objection is overruled.

MR. BARDSLEY: If the Court please, my reason for objecting to this would be compelling the introduction of evidence against this defendant which we have no way of contradicting. This man might have been mistaken in reading that. We are entitled to the best evidence.

THE COURT: The general rule is that where a writing is presumably or prima facie in the possession of the defendant, the Government cannot call for it, because that would be the compelling of your evidence itself. Therefore secondary evidence may be resorted to. You may proceed.

MR. MORROW: Q. What was the contents of this bill fold that you read?

A. It contained a brakeman's card. On the card was "Dominic Constantine, Kalispel Division, Great Northern Railway, brakeman."

Q. How was the word "Constantine" spelled on that?

A. I couldn't say just how it was spelled now. I have seen it spelled two or three different ways since and before that time.

Q. And what was next said between you and this man?

A. I says, "If you are a brakeman there is no need of your riding up here in this car. Why don't

you get in the caboose. Go on back and get that pack sack and get out.”

Q. What did the defendant do?

A. He went back and got the pack sack and brought it out and set it down in front of me in the car door, and as he set it down he turned and jumped out of the car on the other side. The door war open.

Q. Did you recognize this man at any time after you saw this card?

A. Yes, sir.

Q. When?

A. At the time he set the pack sack down.

Q. Who did you recognize him as?

A. Dominic Constantine, Great Northern brake-man.

Q. Have you seen him since?

A. Yes, sir.

Q. Where?

A. I saw him at the hearing in the Federal Court at Spokane.

Q. Have you seen him since that time?

A. Not outside of today.

Q. Is he in the court room at the present time?

A. Yes, sir.

Q. Just state to the jury where he is sitting, this man?

A. He is sitting at the side of his attorney there in front of me.

Q. Which door did he jump out of?

A. He jumped out of the door on the opposite side from where I was. I don't know whether that is north or south, but we would call it north, the way the railroad runs.

Q. It was the opposite side of you?

A. I had my hand on my gun, and I shot up through the car roof and hollered for him to stop, and I ducked underneath on the other side and shot two or three more times, and hollered for him to stop, but all I could hear was him going through the brush.

Q. Then what did you do?

A. I went back and took the pack sack and took it up on the engine and unlocked it and examined the contents.

MR. BARDSLEY: I object to that testimony. Did you have a search warrant?

A. No, sir.

MR. BARDSLEY: Was there a Government officer there with you?

A. No, sir.

MR. BARDSLEY: I object to the testimony of this witness as to any contents of this. It is contrary to constitutional provisions prohibiting search and seizure without a warrant.

THE COURT: Overruled.

MR. BARDSLEY: Is it necessary for me to take exceptions? I don't know whether it is or not. May I have exceptions to the rulings?

THE COURT: It will be understood that you have exceptions to all adverse rulings.

MR. MORROW: Q. Handing you an article, I will ask you to state what it is.

A. A pack sack.

Q. Is there any way in which you can identify it with the pack sack to which you have just referred?

A. I put my mark on there in green ink.

Q. What is that mark?

A. My initial.

Q. "H"?

A. "H".

MR. MORROW: We will ask to have this marked as Government's Exhibit 1.

"There was a quantity of morphine and cocaine in the pack sack—the bottles were marked that. There was a grip in the pack sack."

And thereupon a certain grip was shown the witness who then testified as follows:

"That is the grip that was in the pack sack." "This handle wasn't on here at that time. You couldn't carry it with that thing. I had a strap on here, a kind of rawhide wore out, and it broke as I was carrying it, because it was too heavy. The bottles I refer to were inside the grip."

Said grip was thereupon marked, Plaintiff's Exhibit No. 2. The witness continued:

"I took the pack sack and the grip and its contents up on the engine, where the engineer and

fireman were, and opened it up and examined it, and brought it into Spokane, and turned it over to Mr. Fred Watt, United States Department of Justice in the Federal Building, at Spokane. This black bag and its contents were in my custody during the balance of the time, from the time I was at Colburn until I got to Spokane, and delivered it to Mr. Watt. It was right after dinner, if I remember right, that I took it up to Mr. Watt on the 6th day of April."

MR. MORROW: "We offer in evidence, Exhibits 1 and 2."

MR. BARDSLEY: "Did I understand you are just offering the grip and the pack sack?"

MR. MORROW: "At the present time, yes."

The witness continued:

"The bottles I have referred to were still in the grip when I delivered it to Mr. Watt. I initialed some of those bottles at the time I took them up to Mr. Watts' office, if I remember right, either there or just before I took them up."

MR. MORROW: Q. "Handing you a bottle, I will ask you to state if your initials are on there?"

A. "Yes, sir; they are. 'H. T. H.' right there."

Said bottle was marked Plaintiff's Exhibit No. 3, and another bottle marked Exhibit No. 4.

The witness then continued:

"The bottle marked Plaintiff's Exhibit No. 4 has my initials 'H. T. H.' right there. The other bottles were similar in general appearance to the

ones I have just identified as Government's Exhibits 3 and 4. They were cocaine. I counted the bottles there was 8 bottles of morphine and 32 bottles of cocaine."

Upon cross examination by Mr. Bardsley, the witness testified as follows:

Q. This was about what time of night?

A. About, after one o'clock, between one and one-thirty.

Q. You were alone?

A. I was alone, yes.

Q. No one with you?

A. No one with me at the time.

Q. Where was Mr. Cole?

A. I don't know where he was.

Q. There wasn't a Government official there with you?

A. No, sir.

Q. Now, as I understand your testimony, you found a car which was unlocked?

A. Yes, sir.

Q. And went to the door and looked in?

A. Yes, sir.

Q. And in that car there was a man and a boy?

A. Yes, sir.

Q. And you told them to come out?

A. Yes, sir.

Q. And they started to come out?

A. Yes.

Q. And as they were coming out you noticed a pack sack back in the car?

A. Well, he came out with a pack sack, when he came out.

Q. Did he come out with a pack sack?

A. Yes, because I sent him back after it.

Q. When he came out, the man got up and came out?

A. He came to the door.

Q. And then you saw a pack sack back there?

A. Yes.

Q. And then you sent him back after the pack sack?

A. Yes, sir.

Q. Then he brought it out?

A. Yes, sir.

Q. At the time you sent him back for the pack sack did this man say anything to you?

A. Yes.

Q. What did he say?

MR. MORROW: That is objected to as hearsay.

THE COURT: Overruled.

A. He said, "I'm a brakeman."

Q. Did he say anything about the pack sack?

A. He said he didn't own it, didn't have any pack sack.

Q. You testified to that before Judge Rudkin?

A. I believe I did.

Q. And when you opened the door who was near this pack sack,—the boy or the man?

A. They were both up at one end of the car, and the pack sack was up in that end of the car.

Q. The boy was laying on the pack sack, was he not?

A. I couldn't say as to that.

Q. You don't remember that?

A. No, sir.

Q. Do you remember testifying to that fact before Judge Rudkin?

A. I don't remember of it. He may have been sitting on the pack sack. There was only about three feet between the side walls of the car and the pack sack on one side. It would be pretty close to the—

Q. This was a dark night?

A. Dark night—One or one-thirty in the morning.

Q. And how long were you there at that door?

A. Oh, just—I wouldn't say over a minute or a minute and a half or two minutes.

Q. A very short time?

A. A very short time, yes.

MR. BARDSLEY: That is all.

On re-direct examination by Mr. Morrow, the witness testified as follows:

“The boy there in the car was just a small kid, weigh about 100 pounds, about 13 or 14 years old, —some little runt that had run away from home, I guess. I did not observe any tags or marks on the pack sack. Not any more, than I put my mark on

there with green ink, and I know that is the pack sack. The grip had a lap on it on the side, with a couple of holes punched through it,—looked like the identification tag had been taken off from it. I remember that distinctly. Those two holes in Exhibit 2 are the ones I refer to.”

Thereupon

ED. THOMPSON, produced as a witness on behalf of the Government, being first duly sworn, testified as follows:

“I am a Special Agent for the Great Northern. I came into Troy, Montana, the evening of the 5th of April, 1921, in charge of a freight train. Mr. Stickney was with me. We got into Troy about 5:30 Montana time. I had been in the employ of the Great Northern about eight years prior to that time. I knew of the defendant, Dominic Constantine, that is, I had seen him, knew him when I saw him, was all. We turned the freight train over to Special Agents Holtz and Weigner. I saw a man about 10 or 12 car lengths away. I couldn't swear to any of it, as far as—I was too far away. I saw a man with a grip. It was broad daylight, 5:30 Montana time. It was a black grip. He was a man that answered to Constantine's description very well. He was walking away from me. I didn't see his face. He went up along side the train, went up towards town, and we tied up on

the main line there in Troy, and we stayed right with the caboose; we didn't go up."

Thereupon,

M. L. STICKNEY, produced as a witness on behalf of the Government, being first duly sworn, testified as follows:

"I was in the employ of the Great Northern Railway in April, 1921, and came into Troy, Montana, with a freight train on the evening of April 5, 1921. Special Agent Thompson was in charge of that train with me. We arrived about 6:30 Montana time. When we stopped at the east switch I got out of the caboose. We had a car of liquor we were taking into Vancouver, B. C., and we were protecting that car, and I think it was 12 or 14 cars from the caboose, and I saw this short, stout, stocky man jump out of a car with a black grip, and I didn't want to leave this car down there in that section of the yard, so I asked Thompson, and we both watched him, and he passed over a bridge going into the Troy yard. When I got into the Troy yard, at the depot, I met Special Agents Holz and Weigner, and I described this fellow to him, there in the yard at the depot, when I met them, I was 12 or 14 cars from this man when I first saw him. I never had known Dominic Constantine. The man I saw was a short, stocky man, with a black grip. I do not know when the freight train pulled out of

Troy. I went to bed as soon as I got into Troy; and I didn't hear of it until I got to Spokane next morning."

Thereupon,

WILLIAM DeLONG, produced as a witness on behalf of the Government, being first duly sworn, testified as follows:

"I reside at Hillyard, Washington, and in April, 1921, was employed by the Great Northern Railway, as yard clerk there. I had known Dominic Constantine before I went there in June, 1919. I saw him at Hillyard the morning of April 6, 1921, about 7:15 or 7:30, going South on Harrison St. This was 6 or 7 blocks from the yard office. It was the defendant sitting here at the table that I saw at that time. That train came in shortly after six o'clock and I went off shift at 7 o'clock. This morning before I went home, the watchman of the yard had told me what Mr. Holz had found along the freight train; he had found a brakeman with some dope or booze or something; and I had known this fellow, worked with him at Whitefish, and as I was going home, he was right ahead of me. I don't remember anything in particular that happened April 5th or 7th. I went to work at 11 p. m. of the 6th and when I went on shift the boys sat around there talking about this particular case. The train that he was supposed to come in on was

extra 3051, I believe. It got in around 6:30. I believe it was Watchman Boyce that I talked with that morning; I won't say for sure. He checks the seals in and out of the yard on high class merchandise and watches the yards in general. He told me of it about 6:45 or 6:50. He just came to the office and was telling the story, not alone to me, but to the men in the office, that they had found a large amount of cocaine or booze,—I don't just exactly know which now. That morning I saw this defendant on the streets of Hillyard, and that is the way I have of fixing the date."

Thereupon,

WILLIAM H. PRATT, produced as a witness on behalf of the Government, testified as follows:

"I am a special agent of the Great Northern Railway, and was in that employ in the winter and spring of 1921, stationed at Spokane. I had known Dominic Constantine a little over a year in the spring of 1921. I have seen the grip Plaintiff's Exhibit No. 2, before. I saw it in Dominic Constantine's possession about a month previous to the time that Mr. Holtz got these narcotics in it. I was at Hillyard, Washington, at 7:05 in the morning about a month previous to that when train No. 1 pulled in and Constantine stepped off of the train. I got on the train, on the head end of the smoking car and he followed me in, and I

passed this grip. I didn't pay any particular attention to it at the time, but he followed me in and picked it up and went out, and I followed him out. I got close enough to him so that I would know the grip if I would see it again. Those two holes in the flap is the one particular mark that I remember. The man who had this grip is the defendant in the Court room now. The grip isn't in the same condition now. It hasn't got the same handle on it. It is a different handle. I was on the platform when he got off the train. I got on the train and he followed me in and picked that grip up. I saw it sitting on the first seat on the right hand side as I went in the smoking car. I followed him out and looked at the grip as he came out. I didn't take it away from him. I didn't have any right to. I had an interest in looking at it because I knew he had been arrested before, and I was an officer, a special deputy sheriff of Spokane County for the Great Northern.

Thereupon,

FRED A. WATT, produced as a witness in behalf of the Government being first duly sworn, testified as follows:

"I am a special agent of the Department of Justice stationed at Spokane, in 1920 and 1921. During the spring of 1921, Mr. Harry Holz of the G. N. Railway Co., delivered to me a grip containing some

narcotics. That was about the 6th of April. Max Wasson was there in the office with me in the Federal Building, at the time he brought the stuff in and also the stenographer Pritchard. Plaintiff's Exhibit No. 2, looks like the grip with a new handle on it. There were about 40 bottles in the grip, 32 I believe were marked morphine, and 8 marked cocaine. They had printed labels on them. I did not mark them. I do not know as there is any way of identifying the particular bottles, but all of these bottles were similar to Plaintiff's Exhibits 3 and 4. I took possession of them and kept them in the cage, the iron cage. It is locked with a padlock, and a Yale lock, a heavy Yale lock. The cage was in my office. I turned them over to Mr. Gatons about three months later. I know Mr. Harold W. Cole. The day that Holz brought these in, Mr. Cole came down there and we opened the grip—I believe Lou Watts was with him—and we opened the grip and counted the bottles. Harold Cole was a narcotic agent of the Government and Lou Watts was also a narcotic agent. I counted the bottles with them. I think Mr. Cole came back and got four bottles after that, between that time and the time I delivered them to Mr. Gatons. I think it was sometime in May. I think the four bottles referred to had been returned before the bottles were turned over to Mr. Gatons. That was early in July. No one else has access to that vault. There are only two keys to the vault, so far as I know,

and I had both of them, carried them in my pocket all the time. That was in July, 1921. The occasion of my turning the bottles over to Mr. Gatons was that I was going to have the cage torn out, taken out of the office, so that I would have no place to to keep them.

Thereupon,

MR. HAROLD W. COLE, produced as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

“I am a federal narcotic agent, and have been in that occupation about five years. About the 6th of April, in Mr. Fred Watt’s office in Spokane, I counted the bottles of a quantity of morphine and cocaine. Mr. Watt, Mr. Wasson and Mr. Lewis Watts, the narcotic agent I was working with at the time, were there. I believe I initialed 3 or 4 bottles at that time. My initials are on plaintiff’s exhibit 3 and 4, and the date. They were placed there April 6, 1921. I counted them at that time and left them with Mr. Watt. There were 32 ounces of cocaine and 8 ounces of morphine, each bottle was marked with the manufacturer’s label, cocaine and morphine. There were no revenue stamps of any kind on the bottles. About a month later, in preparing to present the case to the Grand Jury, I secured two or four of the bottles, those that I had initialed and brought them here to

Coeur d'Alene, to appear before the Grand Jury, in the indictment of this case. I took these bottles to a drug store here in Coeur d'Alene. I am a graduate of the College of Pharmacy, and served ten years as a prescription clerk, and five years of this work, and have made tests of cocaine and morphine a great many times.

During the 5 years I have been employed as a narcotic agent I have made tests of narcotics as a witness in a great many cases. I opened two of the bottles, one morphine and one cocaine, and tested them, and found them to be what they were labeled, morphine and cocaine. I didn't open every bottle and weigh it, but it was approximately 32 ounces of cocaine and 8 ounces of morphine. I am referring to cocaine hydrochloride as cocaine, and morphine sulphate as morphine. Exhibits 3 and 4, are the bottles I tested.

Whereupon, Exhibits 3 and 4 were offered in evidence and admitted. The witness continued:

“After I appeared before the Grand Jury, I returned to Spokane and gave these bottles back to Mr. Fred Watt. I took the grip or package out of the vault, and I put them in the grip and he put them back in the cage—not the vault—the cage. I again saw these two bottles and the other 38 when I accepted them from Mr. Gatons in the vault at the Exchange National Bank in Spokane, the whole forty bottles. I took them with me to Boise, Idaho, and put them in the vault there. I later took them

out of that vault and packed them with, Oh, probably evidence in twenty other cases, perhaps more, and send them to Denver to Mr. Williamson, Agent in Charge. That was shortly before the first of March this year, 1922.

Whereupon, the witness examined the contents of a suit case in the Court room, and stated that the bottles therein were the bottles referred to, that he took from Spokane, to Boise, and shipped to Denver.

The witness then continued:

“The current value per ounce in Spokane and vicinity and in the vicinity of Colburn, Idaho, in April, 1921, would be about \$12.00 for the morphine and the cocaine about \$10.00 an ounce. That is legitimate sales, possession of narcotics would be in the hands of druggists and doctors and sold legitimately on narcotic forms. The current price in illegitimate sales or the bootleg price in Northern Idaho, locality at that time was about \$50.00 per ounce, for cocaine and \$60.00 for morphine. The business is done by the smuggler or importer and sold to the wholesaler, and the wholesaler to the retailer, and to the user. And the smuggler or importer, I can't give a fair estimate as to the value to him, that is, the amount he would have to pay, but I do know the value that the retailer would pay the wholesaler or smuggler. That is \$50.00 an ounce buying in ounce lots for cocaine and \$60.00 for morphine. Then the sale, of course, by the re-

tailer to the consumer, there are enormous profits in it. I mean where it is sold in bindles, by the grain, there would be about 400 bindles in a bottle and each bindle would sell for a dollar.

There is a manufacturer's label on each bottle. I knew, of course, what that was—manufactured by Smith, of England, the morphine, and McKess & Robbins, of New York, the cocaine. Some addicts use both morphine and cocaine, and some use only one. The average addict must use four or five in the minimum amount of morphine a day and there is no limit to the amount of cocaine that could be used by an addict, and the maximum of morphine would probably be fifty grains a day, that would be \$50.00, but that would be very unusual, that would be fifty bindles, but that would be very unusual. The average addict we find on the street, who would be purchasing this, would spend from five to ten dollars a way. So an ounce bottle would last the ordinary addict forty days at least.

And thereupon,

ALBERT E. GATONS, produced as a witness on behalf of the Government, being first duly sworn, testified as follows:

“I am a federal narcotic agent, and I have been in that employment in the Spokane District since June 28, 1921. As soon as I secured my safety deposit box the early part of July. The bottles here,

Plaintiff's Exhibits 3 and 4, and the other 38 bottles which are in the suit case were turned over to me by Agent Fred Watt of the Department of Justice. That was the early part of July, 1921. I put it into my safety deposit vault at the Exchange National Bank of Spokane. It was kept there by me for safe keeping until approximately the finish of the September term of Court, when I turned it over to Mr. Cole, who took it to Idaho with him. That would be the fall term of Court, 1921. No one else had access to that safety deposit box. The entire forty bottles, 32 ounces of cocaine, and 8 of morphine, were placed in my possession by Mr. Watt and turned over by me to Mr. Cole.

MR. L. R. WATTS, produced as a witness on behalf of the Government, being first duly sworn, testified as follows:

"I am a federal narcotic agent and was working in Spokane in April, 1921. On the morning of, I think, April 6, Mr. Watt informed me that Mr. Holz of the Great Northern Railway had got a valise with a bunch of narcotics, and I went down to the office with Mr. Cole. I saw the grip at that time that this stuff was in. Plaintiff's Exhibit No. 2, is the grip with the exception of the handle. I watched the bottles being counted. There were 8 bottles of morphine and 32 of cocaine, according to labels.

HARRY V. WILLIAMSON, produced as a witness on behalf of the Government, being first duly sworn, testified as follows:

“I am narcotic agent in charge of the Denver division, located at Denver, Colorado, that includes Idaho. About the first day of March, 1922, I received an express package which was set from narcotic inspector or agent, H. W. Cole, to Denver, Colorado, under a franked bill of lading. Plaintiff’s Exhibits 3 and 4 were enclosed in that package. There was also 7 ounces of morphine and 31 ounces of cocaine hydrochloride in addition to those two. The contents of the suit case here in Court are the bottles I refer to. I received them with other narcotic drugs and removed them from the express package and placed them in that suit case and placed the suit case with the contents in the vault in our office at 308 Custom House Building, Denver, Colorado, that is a vault with a combination lock. They remained there until June 30, 1922, at which time I removed them from the vault and turned them over to Narcotic Inspector Harry W. Ballaine to be brought to Coeur d’Alene, for trial, during the time the case was set in July, 1922.

Whereupon, the examination continued as follows:

Q. Did you examine or did you inspect the labels on these bottles at that time?

A. I did.

Q. I will ask you to just inspect the labels and set the bottles out here, so that the jury can see them.

THE COURT: I don't think that is necessary, is it, to take the time to do that?

MR. MORROW: If there is no other objection at this time, we will offer the remaining thirty-eight bottles in evidence.

Q. (By MR. BARDSLEY). Mr. Williamson, who did you say you turned these over to in July?

A. June 30, 1922, I turned them over to Narcotic Inspector Harry W. Ballaine, in our office at 308 Custom House Building, Denver, Colorado.

Q. How long did he have them?

A. He has had them the remainder of the time.

MR. MORROW: He is here and I will call him as a witness.

MR. BARDSLEY: That is all the questions I have.

Whereupon,

HARRY W. BALLAINE, was produced as a witness on behalf of the Government being first duly sworn and testified as follows:

"I am federal narcotic inspector. About March, 1922, or the last part of February, I helped Mr. Cole pack the bottles of narcotics involved in this case, and we expressed them to Denver. On July 30, 1922, at 308 Custom Building, Mr. Williamson

took the suit case out of the vault and I looked at the bottles and accepted it there at the office at that time, and brought them to Coeur d'Alene. They were not out of my possession while in transit. I took them over to the bank across on the corner here, the Exchange Bank, where Mr. Crane, is interested. I put a seal on the suit case, and asked him if he would take care of them in his vault until we came to the next term of Court, that was about July 12, 1922. I next saw this suit case this morning, the seal was unbroken, just the same as I had put it on."

Thereupon,

H. T. HOLZ was recalled and testified as follows:

"We left Troy, Montana, about 7 or 7:30 Spokane time, the evening of April 5, 1921; that would be an hour earlier, Montana time, 6 or 6:30."

Thereupon the Government rested the case, and defendant renewed his motion for directed verdict for the reason that there had been no proof of any sale.

The Court denied the motion and granted defendant an exception.

Thereupon,

MRS. T. B. CAMPBELL, produced as a witness

on behalf of the defendant, being first duly sworn, testified that she had lived in Spokane, Washington, for thirteen years, that she now lived at 307 West Fourth Avenue, and first became acquainted with defendant March 1, 1921, that he was at her house on April 5, 6, 7 and 8, 1921, and that every one of those nights he slept there, and every night during the month of March, the month of April, and two weeks of May; that he had never been out of the house but one night in March. Defendant and a friend of his rented the rooms on the first of March; that she was not related to the defendant by marriage, or otherwise; that defendant came in through the room where she slept as there was no other convenience or entrance to his place of sleeping; and that when she went to bed, and they were out, she would put the key out for him to come in; and he came in there and went to his room through her room; that when he came through her room, he would not turn on the light, and it would be dark when he would come through; that defendant was working on a piece of land at Hayden Lake, early in May, and that on the 6th of April, defendant took her to Hillyard to look for a couple of lots she had there there in the afternoon; they went in his car, and never got out of the car; that she knew this was on the 6th of the month because the 8th of the month was her rent day, and she asked defendant if he would take her rent out to the landlord as the 6th was such a cold, nasty

day; that the rent was payable to Frank Murphy at 1103 Mission Avenue, about 10 or 12 blocks from where she lived.

Whereupon the defendant rested and William DeLong, recalled on rebuttal on behalf of the Government, testified that on the morning of the 6th of April, when he got home, he tried to call the Special Agents Department, and finally got Mr. Pratt in Spokane, and told him what he had seen.

MR. WILLIAM H. PRATT, being recalled in rebuttal on behalf of the Government, testified as follows:

“I looked around the streets for defendant quite a bit, the afternoon of April 6, I had a report from Hillyard from Mr. DeLong, but I did not send anyone to Hillyard to look for the man there or take it up with anyone.

Whereupon,

MR. WESLEY TURNER, produced as a witness in behalf of Government and being first duly sworn, testified as to his experience in criminal investigations and matters of identification, but his testimony was ruled out as not proper rebuttal, and the Government rested.

Whereupon, the case was argued by Mr. Morrow on behalf of the Government and Mr. Bardsley on behalf of the defendant.

Whereupon, the Court instructed the jury as follows:

Instructions of the Court to the Jury:

THE COURT: Gentlemen of the Jury, the indictment in this case is based on what is popularly referred to as the Harrison Anti-narcotic Act. The general purpose of this act is to control the sale and also the purchase of narcotics, such as morphine and cocaine. There are certain provisions in the act regulating the sale and purchase, providing under what conditions purchases may be made, and under what conditions sales may be made of these drugs. Different offenses are defined by the act. One of such offenses so defined is the dispensing or selling or dealing in or distributing the drugs, without having a license so to do. Under certain conditions, druggists, for instance, may obtain a license, and under that license may sell these drugs, but it is made a criminal offense to sell or deal in or dispense the drugs without having registered and procuring such a license. Now it is upon this provision of the Act that this indictment is based. The charge is,—I call your attention to it again—that on or about the 6th day of April, 1921, at Colburn, in Bonner County, Idaho, Dominic Constantine, the defendant, did deal in, dispense, sell, and distribute these two drugs which are named as morphine sulphate and cocaine hydrochloride, and further, that he did so without first having registered

and obtained a license. In the absence of proof the presumption is, and you may assume that he did not have a license to sell. Hence the question is, whether or not he was dealing in or dispensing or selling these drugs. Now there is no evidence, there is no direct evidence, there is no direct proof that he sold or dealt in or disposed of these drugs. and it will be necessary for you to determine from the evidence as it comes before you whether this charge, or this part of the charge is sustained beyond a reasonable doubt.

I hardly need say to you that in a case of this kind, any more than any other criminal charge, it is not necessary to establish the truth of the charge by positive proof or by direct testimony. If the circumstances are such as to produce in the minds of the jurors the requisite conviction beyond a reasonable doubt, then the proofs are sufficient, even though they are indirect or circumstantial, and even though in part the finding or conviction results from fair inferences from the testimony. Hence you may consider the circumstances. Of course, you must first find that the defendant had possession of the drugs. Unless you are convinced beyond a reasonable doubt that he did have possession of these drugs, of course you won't need to go any further. But if you find with the Government, that it was the defendant in the car at that time, and that he did in fact have possession of these many bottles of cocaine and morphine, I say unless

you find that he actually had possession of these drugs, then you need go no further. But if you find that he did have possession of them, then the question is as to whether or not he was dealing in and selling them. Mere possession may be entirely lawful. Mere possession under some circumstances, for the purpose of use, that is, of the use of the possessor, is not in violation of the law. But you will consider the quantity here as a circumstance bearing upon the question as to whether or not the possessor, if he was the defendant, whether or not the possessor had possession merely for his own use, or whether he had possession in the course of his dispensing or distributing or selling it. I may say to you that it is further drawn to your attention that these containers here, these bottles, are without revenue stamps. There is a provision in the statute to the effect that the drug cannot be purchased or sold except in or from the original or stamped package. Now it is not charged here in the indictment that these drugs were in unstamped packages, and hence there is no charge under this particular provision of the law, but you may consider the fact that the bottles appear to be unstamped the containers are unstamped, as further bearing upon the general question as to the legitimacy or illegitimacy of the possession by the defendant, if you find that he did have possession. Hence you may consider that condition, that is, the unstamped condition, and the quantity, and all other circumstances,

both for and against him, and say whether or not he was dealing in and distributing and selling, dispensing these drugs, or whether he simply had possession; for, as I have tried to make clear to you, you can't convict him upon this charge unless you find that, as charged, he was doing something more than violating the law in respect to having possession, and that he was dealing in and dispensing or selling or distributing the drug.

Now the burden was not upon the defendant to establish his innocence of this charge, but it was upon the Government to prove his guilt, and by evidence which convinces you beyond a reasonable doubt. Whether it is direct or inferential, it must be such, as I have already tried to make plain to you, such as will produce conviction in your minds, and a conviction which is without reasonable doubt. So if, after you have fairly considered all of the evidence, you can truthfully say that you have an abiding conviction of the defendant's guilt, such as you would be willing to act upon in the most important affairs of your own lives, then you have no reasonable doubt, and you should convict. If, upon the other hand, you cannot conscientiously say that you have such an abiding conviction, you have a reasonable doubt, and you should acquit.

One more matter, and that is: The defendant has not taken the witness stand. That is a privilege conferred upon him by the law of the land. He can either testify or remain silent, and hence you

would have no right to draw any inference of guilt or indulge in the presumption of his guilt, merely from the fact that he has remained silent. That principle, as you will see, is closely related to the other, which is so familiar to all of you, that a defendant does not have to prove his innocence, but the Government must prove his guilt. Hence he may simply remain silent, and leave it to the Government to prove his guilt, if it can do so. Of course, while you are not to indulge any presumption of his guilt or draw any inference of his guilt from his silence, neither are you to indulge any presumption or draw any inference that he is innocent, from such silence. You will simply not consider the fact at all one way or the other.

There is but one count in the indictment, and so the verdict is very simple, gentlemen, so you will have no difficulty in using it. All of you must agree. Let the bailiff be sworn.

Whereupon, the jury turned to consider the verdict.

Now at this time, the above entitled cause coming on to be heard on the presentation of the Bill of Exceptions herein and the Court being willing that if any errors have been committed, the same be corrected and that speedy justice be done to the defendant herein. The Court does hereby certify that the foregoing Bill of Exceptions correctly and fully states the proceedings and all thereof; and fully and accurately sets forth the testimony in

evidence introduced upon said trial; and contains the instructions of the Court to the jury, and truly states the rulings of the Court upon the questions of law presented; and the exceptions taken by the defendant appearing therein were duly taken and allowed.

Settled and allowed as defendant's Bill of Exceptions this April 26th, 1923.

FRANK S. DIETRICH,

Judge.

Endorsed:

Lodged March 31, 1923,

Filed April 26, 1923.

W. D. McREYNOLDS, Clerk.

By Pearl E. Zanger, Deputy.

(Title of Court and Cause.)

No. 1627.

PETITION FOR WRIT OF ERROR.

COMES NOW, Dominic Constantine, defendant herein, and says:

That on the 4th day of December, 1922, the Court entered a judgment herein in favor of the United States of America and against Dominic Constantine, finding said defendant guilty, based upon the verdict of the jury rendered and filed in said action, and upon said judgment of guilty sentenced the said defendant Dominic Constantine to

eighteen months in the Federal Penitentiary at Leavenworth.

WHEREFORE, said Dominic Constantine prays that a Writ of Error may issue in his behalf out of the United States Circuit Court of Appeals in and for the Ninth Judicial Circuit, for the correction of the errors so complained of and that the bond of \$4000.00 fixed by the Court, operate as a supersedeas and that a transcript of the record, proceedings and papers in said cause, duly authenticated, may be sent to the said Circuit Court of Appeals.

W. B. McFARLAND,
Coeur d'Alene, Idaho,
NEIL C. BARDSLEY,
Spokane, Washington,
Attorneys for Defendant,
Dominic Constantine.

Endorsed:

Lodged March 31, 1923,

Filed April 26, 1923,

W. D. McREYNOLDS, Clerk.

By Pearl E. Zanger, Deputy.

(Title of Court and Cause.)

No. 1627.

ASSIGNMENTS OF ERROR.

COMES NOW, the defendant, Dominic Constantine, and makes the following assignments of error, which defendant avers occurred upon the trial of

this cause and which defendant will rely upon in the prosecution of the Writ of Error in the above entitled cause.

1. The Court erred in overruling defendant's demurrer interposed to said indictment in said cause.

2. That the Court erred in denying the defendant's motion for a discharge of the defendant, interposed at the close of the statement of the case on behalf of the government.

3. That the Court erred in overruling the defendant's objection to the testimony of H. T. Holtz, a witness on behalf of the government, in permitting said witness to testify as to the name he saw on a certain bill-fold, the proceedings relative thereto being fully set forth in defendant's bill of exceptions herein.

4. That the Court erred in permitting said witness to testify, over the objections of the defendant, to the contents of a certain bag seized without a warrant, the proceedings thereto being fully set forth in defendant's bill of exceptions herein.

5. That the Court erred in overruling the defendant's motion for a directed verdict at the close of government's case, which proceedings are fully set forth in defendant's bill of exceptions herein.

6. That the Court erred in denying defendant's motion for a discharge of the defendant notwithstanding the verdict.

7. That the Court erred in denying the defendant's motion for a new trial.

WHEREFORE, said defendant Dominic Constantine prays that the judgment of said Court be reversed; that such directions be given, that full force and efficacy may inure to the defendant by reason of the assignments of error above.

W. B. McFARLAND,
Residence and P. O. Address,
Coeur d'Alene, Idaho,
NEIL C. BARDSLEY,
Spokane, Washington,
*Attorneys for Defendant,
Dominic Constantine. ...*

Service acknowledged this 31st day of March,
1923,

E. G. DAVIS,
U. S. Attorney.
McKEEN F. MORROW,
Asst. U. S. Attorney.

Endorsed:

Lodged, March 31, 1923,

Filed April 26, 1923,

W. D. McREYNOLDS,

By Pearl E. Zanger, Deputy.

(Title of Court and Cause.)

No. 1627.

ORDER ALLOWING WRIT OR ERROR.

On this day came the defendant, Dominic Constantine, and filed herein and presented to the

Court his petition praying for the allowance of a Writ of Error, and filed therewith his Assignment of Error, intended to be urged by him, and prays that the bond given operate as a supersedeas and stay bond, and also that a transcript of the record, proceedings and papers, upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals in and for the Ninth Judicial Circuit, and such other and further proceedings may be had as may be proper in the premises.

In consideration thereof the Court does allow the Writ of Error and the bond heretofore fixed and posted to operate as a supersedeas in the sum of \$4000.00, is approved and the proceedings to enforce such judgment are stayed until such Writ of Error is determined.

Dated in open Court this 26th day of April, 1923.

FRANK S. DIETRICH,
United States District Judge.

Endorsed:

Lodged March 31, 1923,

Filed April 26, 1923,

W. D. McREYNOLDS, Clerk.

By Pearl E. Zanger, Deputy.

BOND OF DEFENDANT.

Four Thousand (\$4,000.00) dollars in cash deposited in lieu of bond.

(Title of Court and Cause.)

No. 1627.

AMENDED PRAECIPE FOR TRANSCRIPT OF
RECORD.TO THE CLERK OF THE ABOVE ENTITLED
COURT:

You will please include in the record of the above entitled cause to be docketed in the Circuit Court of Appeals for the Ninth Judicial Circuit, and cause to be printed as the record in said Court of Appeals, and send to the Clerk of said Court of Appeals, the following records in the above entitled cause, to-wit:

Indictment, Plea of Defendant, Verdict of the Jury, Judgment and Sentence, Bill of Exceptions, together with the Order of the Judge settling the same, Writ of Error and Citation, Petition for Writ of Error, Order Allowing Writ of Error, Assignments of Error, Bond on Writ of Error, your Certificate to the Transcript, and this Praecipe, and oblige the defendant, Dominic Constantine, and

W. B. McFARLAND,

Residence and P. O. Address:
Coeur d'Alene, Idaho,

NEIL C. BARDSLEY,

Residence and P. O. Address:
Spokane, Washington,

*Attorneys for Defendant,
Dominic Constantine.*

Service acknowledged and copy received this 30th day of April, 1923.

No request is made for any additional papers and printing may begin at once.

E. G. DAVIS,
U. S. Attorney,
McKEEN F. MORROW,
Asst. U. S. Attorney.

Endorsed:

Filed April 30, 1923,

W. D. McREYNOLDS, Clerk.

WRIT OF ERROR.

The United States of America.—ss.

To the Judge of the District Court of the United States for the District of Idaho, Northern Division:

Because in the record and proceeds, as also in the rendition of the judgment of a plea which is in the District Court before the Honorable Frank S. Dietrich, one of you, between United States of America, plaintiff and defendant in error, and Dominic Constantine, defendant and plaintiff in error, a manifest error hath happened to the great damage of the said plaintiff in error as by complaint doth appear; and we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, and in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the

United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco, California, within thirty days from the date hereof, in the said Circuit Court of Appeals to be then and there held; that the record and proceedings aforesaid, being then and there inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States of America should be done.

WITNESS the Honorable William H. Taft, Chief Justice of the Supreme Court of the United States, this 26th day of April, 1923.

(SEAL)

W. D. McREYNOLDS,

Clerk.

Endorsed:

Lodged March 31, 1923,

Filed April 26, 1923,

W. D. McREYNOLDS, Clerk.

By Pearl E. Zanger, Deputy.

(Title of Court and Cause.)

No. 1627.

CITATION.

The President of the United States to the above named plaintiff and to E. G. Davis, attorney for plaintiff:

You are hereby cited and admonished to be and

appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held in the City of San Francisco in the State of California, within thirty (30) days from the date of this writ, pursuant to a writ of error filed in the Clerk's office of the United States District Court for the District of Idaho, wherein Dominic Constantine, is the plaintiff in error, and you are attorney for the defendant in error, to show cause, if any there be, why judgment in the said writ of error mentioned, should not be corrected and speedy justice should not be done the parties in that behalf.

WITNESS the Honorable William Howard Taft, Chief Justice of the Supreme Court of the United States, this 26th day of April, A. D. 1923, and of the independence of the United States, one hundred and forty-six.

FRANK S. DIETRICH,
Judge of the Above Entitled Court.

Attest:

W. D. McREYNOLDS, *Clerk.*

(SEAL)

Service of the within Citation is hereby acknowledged this 26th day of April, 1923.

E. G. DAVIS,
McKEEN F. MORROW,

Attorneys for Plaintiff.

Endorsed:

Filed April 26, 1923,

W. D. McREYNOLDS, Clerk.

By Pearl E. Zanger, Deputy.

(Title of Court and Cause.)

No. 1627.

CLERK'S CERTIFICATE.

I, W. D. McReynolds, Clerk of the District Court of the United States for the District of Idaho, do hereby certify the foregoing transcript of pages numbered from 1 to 56, inclusive, to be full, true and correct copies of the pleadings and proceedings in the above entitled cause, and that the same together constitute the transcript of the record herein upon Writ of Error to the United States Circuit Court of Appeals for the Ninth Circuit, as requested by the Praecipe filed herein.

I further certify that the cost of the record herein amounts to the sum of \$68.75, and that the same has been paid by the Plaintiff in Error.

Witness my hand and the seal of said Court, this 7th day of May, 1923.

W. D. McREYNOLDS,

(SEAL)

Clerk.